

COURT OF APPEAL
FIFTH CIRCUIT
STATE OF LOUISIANA

CIVIL WRIT No. **16-C-76**

VINTAGE CHURCH OF NEW ORLEANS,
INC. and MATTHEW P. BRICHETTO
Plaintiffs-Applicants

versus

JEFFERSON PARISH SHERIFF'S OFFICE
and JEFFERSON PARISH
Defendants-Respondents

In the Application for Supervisory Writ from
24th Judicial District Court, Parish of Jefferson
State of Louisiana
Suit No. 756-135, Division G
The Honorable E. Adrian Adams, Judge Presiding

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**APPLICATION OF PLAINTIFFS VINTAGE CHURCH OF NEW
ORLEANS, INC. and MATTHEW P. BRICHETTO FOR SUPERVISORY
WRIT**

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AFFIDAVIT OF VERIFICATION AND SERVICE

STATE OF LOUISIANA

PARISH OF JEFFERSON

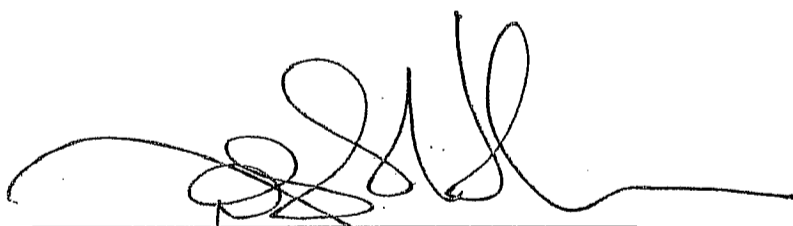
I verify that, to the best of my knowledge, information, and belief, the allegations in this writ application are true.

The persons listed below have been notified of the filing of this writ application and have been served with a copy of this writ application by means equally prompt with that used to effect filing in this Court.

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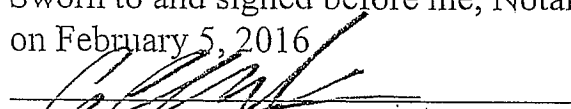
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Gretna, Louisiana, February 5, 2016.

Sworn to and signed before me, Notary,
on February 5, 2016



GARY J. CLARK (LSBN 29124)
NOTARY PUBLIC
My commission expires with life.

I. STATEMENT OF JURISDICTION AND GROUNDS FOR GRANTING WRIT APPLICATION

Pursuant to Louisiana Code of Civil Procedure, Article 2201, Plaintiffs-Applicants, Vintage Church of New Orleans, Inc. and Matthew P. Bricchetto, seek supervisory review of the trial court's January 6, 2016, Judgment denying Plaintiffs' request for injunctive relief to enjoin Defendants and any of their agents, employees, or other persons or entities acting on their behalf or in their stead from (1) enforcing Jefferson Parish Code of Ordinances 20-102 against Plaintiffs or (2) requiring a special event permit, under Jefferson Parish Code of Ordinances 26-31, in order to have a church service on property wholly owned by Plaintiffs.

The Judgment complained of was rendered in open court on December 22, 2015, and reduced to writing on January 6, 2016. Notice of Judgment was mailed by the Clerk of Court to counsel for Defendants on the 7th day of January, 2016. Plaintiffs-Applicants filed a Notice of Intent to Seek Supervisory Writ; and, a return date was set for February 8, 2016. Thus, this Writ Application is timely and the Court has supervisory jurisdiction to review the Judgment complained of. *See* R. 4-3, Unif. R. La. Cts. App.

The Court of Appeal, Fifth Circuit, also has jurisdiction over this matter pursuant to the Constitution of the State of Louisiana, Article V, Sections 10(A) and (B) and Louisiana Code of Civil Procedure Article 2201. An Interlocutory Judgment that causes irreparable harm is subject to this Court's appellate jurisdiction. La. Code Civ. Proc. Art. 2083.

I. STATEMENT OF THE CASE AND ACTION OF THE LOWER COURT

A. Factual Background

Vintage Church began in January of 2008 as a Bible study with twenty-five people. Verified Petition for Temporary Restraining Order, Preliminary Injunction,

Permanent Injunction, and Declaratory Judgment (hereinafter "Pla. Pet."), ¶8.

Vintage Church believes that:

The Church exists to worship and glorify God as Father, Son and Holy Spirit and to serve Him by doing His will in the earth. All members of the Church universal are to be vitally connected and committed to a local church. In this context, they are to live in this present world as the people of God, demonstrating the reality of the kingdom of God, manifesting the purity of the life of God, and living solely for the glory of God. Believers are to use the gifts the Holy Spirit has given in order to build up the church and preach the gospel, ministering and making disciples throughout the world.

Vintage Church, *Our Beliefs*, <http://www.vintagechurchnola.com/beliefs> (last visited Feb. 1, 2016).

Plaintiffs believe that they have a religious obligation to meet in their community for worship, including musical worship, and to preach the Gospel and minister to those in the community. Pla. Pet. ¶10.

In 2011, Vintage Church opened a new church location at 3927 Rayne Street in Metairie, Jefferson Parish, Louisiana. *Id.* at ¶11. Soon its 3927 Rayne Street building was too small to hold the number of congregants desiring to attend services each week. *Id.* at ¶13. Vintage Church decided that in order to minister to its congregants and the community effectively and to grow and build up its church, it needed to expand its building. *Id.* Although the church looked for alternative locations at which to have church services, it found no possibility that either the church could afford or would meet the needs of its congregants. Transcript of the Preliminary Injunction Hearing (hereinafter "Hrg. Tr."), 24:24–31. Hrg. Tr. is attached hereto as Exhibit D. In order to meet the needs of its congregants and continue its mission in the community, Vintage Church moved out of the building and into an air-conditioned and heated tent placed on Vintage Church's parking lot. *Id.* at 24:31–25:4. The tent was to serve as Vintage Church's meeting area until construction could be completed in April or May of 2016. Pla. Pet., ¶14.

Plaintiffs immediately attempted to comply with Jefferson Parish requirements for their worship services to meet in the tent. *Id.*; Hrg. Tr., 18:8–10; 67:6–28. Jefferson Parish instructed that the worship tent could only be placed in one orientation due to requirements for parking and ingress and egress to the physical building. *Id.*; Hrg. Tr., 22:15–26; 67:6–28. This required Vintage Church to reduce the size of the tent by half and to have two services in order to fit all of its congregants. *Id.*; Pla. Pet., ¶24. Plaintiffs complied. *Id.*

Jefferson Parish then required that Plaintiffs obtain a special event permit to conduct a church service in accord with Plaintiffs' religious beliefs in Vintage Church's tent, which is wholly located on Vintage Church's private property. *Id.* at 164:1–17; Pla. Pet., ¶101. Jefferson Parish's special event permit ordinance, however, on its face, does not apply to a church service held on private property. *Id.*; Jefferson Parish Code of Ord. ("JPCO") 26-31.

JPCO 26-31 *et seq.* covers special event permits for "public assembly." Pursuant to JPCO 26-31, a "special event" is "[t]he temporary use of *public* property for the purpose of conducting certain outdoor short term events that are open to the public, including block parties, outdoor music events, and events for a commercial purpose, *which utilize the traveled portions of streets and/or involve the placement of objects on a right-of-way.*" JPCO 26-31 (emphasis added).

Plaintiffs still applied for and received two JPCO 26-31 special events permits in August and September, even though Defendants later admitted that it was unnecessary for them to obtain the permits for holding a worship service on their private property. Pla. Pet., ¶¶ 17, 22; Hrg. Tr., 166:1–9; 167:4–10.

On September 25, 2015, Jefferson Parish mandated that Vintage Church reduce the size of the tent in which they were meeting by half to meet parking requirements. Hrg. Tr., 22:15–26. Again, Vintage Church complied and paid to reduce the size of the tent, even though the reduced size is not adequate to house

all of their congregants for the church. *Id.* Because of Jefferson Parish's instruction that they decrease the size of their tent, Plaintiffs were required to switch from one service to two services at 9:00 a.m. and 11:00 a.m. to make space for its members. *Id.*; Pla. Pet., ¶32.

On October 7, 2015, Director of Citizens Affairs for Jefferson Parish, Sean Burke, sent a letter to Vintage Church threatening the church to stop having any music or *Vintage Church would be shut down*. Hrg. Tr., 19:26–28; 20:4–8. He also informed Vintage Church that he would no longer be granting any events permits for their services, even though Defendants later admitted none were required under JPCO 26-31. Pla. Pet., ¶22; Hrg. Tr., 166:1–9; 167:4–10.

Between July and December, multiple JPSO police units would show up for as many as twenty Sundays. Pla. Pet., ¶¶20, 21, 23, 24, 25, 27, 29–31, 33, 35; Hrg. Tr., 131: 26–28; 139: 6–8. On October 11, 2015, after approximately three months of monitoring Vintage Church worship services, multiple police officer patrol cars arrived at Vintage Church in response to a neighbor's call and issued a criminal summons to Executive Pastor of Vintage Church Matthew Bricetto for violating Jefferson Parish Code of Ordinances ("JPCO") 20-102 because the sound was measured at over 60 dB. Pla. Pet., ¶27; Hrg. Tr., 57:6–11.

In an attempt to comply with Jefferson Parish's requirements, Vintage Church hired a sound technician to ensure that the sound levels remained below 60 dB. Hrg. Tr., 18:8–13.

After working to keep their sound level below 60dB, Vintage Church was then informed by the JPSO that *any* sound that was amplified was prohibited, regardless of its sound level. *Id.* at 18:16–22; 162:11–13. To meet Defendants' ever-changing demands, Plaintiffs' altered their worship and preaching by not including amplification or microphones throughout the service, to the detriment of their worship. *Id.* at 18:16–22; Pla. Pet., ¶86.

Even after acquiescing to Jefferson Parish's restrictions, which greatly impeded Vintage Church's ability to worship God, to preach, to complete its mission to minister to its congregants and the community, to celebrate the Christian season of Advent, and to even have the space needed for its congregants to worship, Jefferson Parish still would not leave the church alone. Hrg. Tr., 16:31–17:32; 18: 8–28; 20:18–25; 22:16–26; 26:25–27:15.

For the next five Sundays, JPSO continued to send out sometimes as many as six police vehicles at a time to the Vintage Church worship services. *Id.* at 83:27–29; Pla. Pet., ¶35. The Jefferson Parish Sheriff, Newell Normand, personally parked his undercover car at the end of the street to monitor Vintage Church's church service, even though his officers were already on scene. Pla. Pet., ¶35; Hrg. Tr., 111:8–14. On November 12, JPSO Captain Michael Kinler called Vintage Church and told them that JPSO would begin to issue summons or even "physically arrest" Vintage Church personnel if any amplified sound were used by the church for the first service, including the pastor's use of a microphone to preach, *regardless of the sound levels*. Pla. Pet., ¶35; Hrg. Tr., 63:16–31.

On November 15, 2015, six JPSO officers and Sheriff Normand in an unmarked black SUV, arrived at Vintage Church in response to a neighbor's call. Hrg. Tr., 57:17–26; 83:27–31; 111:8–14. Vintage Church was not using any sound amplification, but JPSO officers demanded to inspect the equipment in Vintage Church's tent to ensure that there was no sound amplification. Pla. Pet., ¶35; Hrg. Tr., 86:28–87:2. Vintage Church's pastors showed the JPSO officers that all sound equipment was unplugged. *Id.* JPSO nevertheless issued a second criminal summons to Pastor Bricchetto, stating that the sound levels were above 60 dB without any amplification at all. Hrg. Tr., 90:29–32.

Despite Plaintiffs' attempts to be responsive to Defendants' ever-changing demands, Defendants have continued to impose burden after burden on Plaintiffs.

Hrg. Tr., 26:29–27:15. Now, the restrictions placed on Plaintiffs by Defendants have put Plaintiffs in the position of having to decide between stopping their church worship services or being continually cited and threatened with “physical arrest.” *Id.* at 63:16–65:3; Pla. Pet., ¶¶ 34, 67, and 77. The demands of the JPSO effectively stop Plaintiffs from being able to have church services and completing their ministry. Hrg. Tr., 18:11–28; 26:29–27:15; Pla. Pet., ¶77.

Defendants have engaged in a campaign of intimidation against Plaintiffs by sending multiple police units to respond to alleged noise-ordinance violations for twenty Sundays, having Jefferson Parish officials call and coerce Vintage Church leaders, issuing criminal summons, and continually change regulations and requirements for their church services. Hrg. Tr., 131:26–28; 139:6–8. Throughout JPSO’s campaign, Plaintiffs and Defendants had already been in communication with each other and Plaintiffs had already taken every reasonable step to reduce the noise level, to the irreparable harm of their worship. Hrg. Tr., 52:14–53:19.

Regardless of all of Vintage Church’s efforts (including using no sound amplification or microphones) they have been unable to keep their noise below the JPCO 20-102 60dB noise limitation. Hrg. Tr., 18:8–25; 52:14–53:19. Notably, the 60dB limitation is approximately the volume of a normal conversation, office, background music, or an air conditioning unit at 100 feet.¹ Pla. Pet., ¶98.

B. Procedural Status of the Case

On December 10, 2015, Plaintiffs filed Plaintiffs’ Verified Petition for Temporary Restraining Order, Preliminary Injunction, Permanent Injunction, and Declaratory Judgment to enjoin Defendants and any of their agents, employees, or other persons or entities acting on their behalf or in their stead from violating the First and Fourteenth Amendments to the United States Constitution, LPRC and RLUIPA by (1) enforcing Jefferson Parish Code of Ordinances 20-102 against

¹ Purdue Dep’t of Chemistry, *Noise Sources and Their Effects*, <https://www.chem.purdue.edu/chemsafety/Training/PPETrain/dblevels.htm> (last accessed Nov. 21, 2015).

Plaintiffs or (2) requiring a special event permit, under JPCO 26-31, in order to have a church service on property wholly owned by Plaintiffs. Pla. Pet. is attached hereto as Exhibit A.

At the December 22, 2015 hearing on Plaintiffs' request for a preliminary injunction, the trial court abused its discretion by denying the preliminary injunction despite uncontroverted evidence and testimony establishing that (1) Jefferson Parish CO 20-102 imposes a substantial burden on Plaintiffs' free exercise of religion; (2) Plaintiffs have suffered irreparable injury; (3) Jefferson Parish CO 20-102 is impermissibly vague and overbroad; and (4) Vintage Church is not required to have a special event permit in order to have a church service on a tent on its own property. Hrg. Tr., 176:11-14; 177:23-24.

Further, the trial court abused its discretion by erroneously rendering judgment on Plaintiffs' request for permanent injunction and a declaratory judgment as neither of those matters were before the court and the denial was rendered without a full trial on the merits addressing the legal issues presented.

The Judgment complained of is attached hereto as Exhibit B. Notice of Judgment was mailed by the Clerk of Court to counsel for Defendants on the 7th day of January 2016. *Id.* Plaintiffs filed a notice of intent to seek supervisory writ, attached hereto as Exhibit C, and the trial court set a return date of February 8, 2016. Attached hereto as Exhibit E. Plaintiffs' contend that, for the reasons stated below, the trial court's denial of a preliminary injunction was an abuse of discretion.

Plaintiffs Vintage Church of New Orleans, Inc. and Matthew P. Brichetto, by and through undersigned counsel, hereby file their Application for Supervisory Writ.

This Court must prevent Jefferson Parish's unconstitutional and illegal application of the law, as well as numerous violations of the U.S. Constitution,

LPRAs, and RLUIPAs from continuing. Defendants' unconstitutional enforcement of the impermissibly vague and overboard JPCO 20-102 and JPCO 26-31 and requirement that Plaintiffs receive a special event permit in order to have a church service on their private property egregiously impedes Plaintiffs' religious actions or conduct in violation of U.S. Constitution, LPRAs, and RLUIPAs.

For these reasons, as well as those stated below, this Court must reverse the Judgment of the trial court and issue a preliminary injunction.

II. ISSUES AND QUESTIONS OF LAW PRESENTED FOR REVIEW

(1) Whether the trial court abused its discretion in denying Plaintiffs' request for preliminary injunction.

(2) Whether the trial court erred in rendering Judgment denying Plaintiffs' request for permanent injunction and a declaratory judgment without those matters being before the court, without a trial on the merits, as well as without addressing all of the legal issues presented.

III. ASSIGNMENT OF ERRORS

The trial court abused its discretion and erred by:

1. Failing to find that JPCO 20-102 imposes a substantial burden on Plaintiffs' free exercise of religion; and, therefore, Plaintiffs have suffered irreparable injury in violation of both the Louisiana Preservation of Religious Freedom Act and Federal Religious Land Use and Institutionalized Persons Act.
2. Failing to find that JPCO 20-102 is facially unlawful under the Equal Terms provision of the federal Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.*
3. Denying Plaintiffs' request for permanent injunction and declaratory judgment without those matters being before the court, without a trial on the merits as well as without addressing the issues of equal vagueness and over breadth or the special permit required for Vintage Church to have worship services on its private property.

IV. LAW AND ARGUMENT

A. The Preliminary Injunction, Permanent Injunction and Declaratory Judgment were Improperly Denied as a Matter of Law

The Judgment complained of warrants the exercise of this Court's supervisory jurisdiction because denial of Plaintiffs' request for preliminary injunction, permanent injunction, and declaratory judgment causes irreparable harm, an injury that cannot as a practical matter be corrected on appeal after final judgment.

An injunction *shall be* issued in cases where irreparable injury, loss, or damage may otherwise result to the applicant, or in other cases specifically provided by law. La. C.C.P. art. 3601(A).

In considering whether a preliminary injunction was properly denied, two questions must be considered: (1) whether the mover presented a prima facie showing that he is entitled to the relief sought and (2) whether the mover will suffer irreparable injury if such relief is not granted. *Maestri v. Destrehan Veterinary Hosp.*, 554 So. 2d 805, 808 (La. App. 5 Cir. 1989).

A showing of irreparable injury is not necessary, however, when the conduct sought to be restrained is unconstitutional or unlawful, i.e., when the conduct sought to be enjoined constitutes a direct violation of a prohibitory law and/or violation of a constitutional right. *Jurisich v. Jenkins*, 99-0076 (La. 10/19/99); 749 So.2d 597, 599; *Shane v. Parish of Jefferson*, 13-590 (La. App. 5 Cir. 09/24/14); 150 So. 3d 406, 413.

Plaintiffs assert violations of the First and Fourteenth Amendments to the U.S. Constitution as well as LPRA, and RLUIPA, seeking to enjoin Defendants from substantially burdening their right to free exercise of religion. Because the conduct sought to be restrained is unconstitutional and violates Plaintiffs' fundamental rights, Plaintiffs must only make a prima facie showing that they will prevail on the merits of the case for a preliminary injunction to be issued. *See Dale*

v. *Louisiana Secretary of State*, 07 2020 La App 1 Cir 10 11 07 971 So 2d 1136
1141.

As the U.S. Court of Appeals for the Fifth Circuit held, a plaintiff church “has satisfied the irreparable-harm requirement because it has alleged violations of its First Amendment and RLUIPA rights. ‘The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.’” *Elrod v. Burns*, 427 U.S. 347, 373 (1976); see also 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2948.1 (2d ed. 1995) (“When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.”).

This principle applies with equal force to the violation of RLUIPA rights because RLUIPA enforces First Amendment freedoms, and the statute requires courts to construe it broadly to protect religious exercise.” *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012); see also *Reaching Hearts Int’l, Inc. v. Prince George’s Cnty.*, 584 F. Supp. 2d 766, 795 (D. Md. 2008) (“[T]he infringement of one’s rights under RLUIPA constitute[s] irreparable injury.” (citing *Elrod*, 427 U.S. at 373)). This same applies to RFRA (and thus LPRA) as it does to RLUIPA. *Kikumura v. Hurley*, 242 F.3d 950, 963 (10th Cir. 2001) (“[C]ourts have held that a plaintiff satisfies the irreparable harm analysis by alleging a violation of RFRA.”); *Tyndale House Publr., Inc. v. Sebelius*, 904 F. Supp. 2d 106, 129 (D.D.C. 2012); *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 429 (2006) (assuming irreparable harm to the plaintiff in a RFRA case); and *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996).

At the preliminary injunction hearing, the trial judge denied Plaintiffs’ request for a preliminary injunction on the sole ground that Jefferson Parish “d[id] not impose a substantial burden on Plaintiffs’ exercise of their religious beliefs” and therefore, “[t]he Court d[id] not find that the Plaintiffs suffered any reparable

harm.” Hrg. Tr., 176:11–14; 177:23–24. Because the trial court denied Plaintiffs’ request for preliminary injunction on this basis alone, Plaintiffs limit their argument below to the issues of (1) whether JPCO 20-102 imposes a substantial burden on Plaintiffs’ free exercise of religion and therefore, Plaintiffs have suffered irreparable injury in violation of LPRA, and RLUIPA; (2) whether JPCO 20-102 is facially unlawful and unconstitutional due to unequal treatment, vagueness, and substantial over breadth, in violation of the First and Fourteenth Amendments to the United States Constitution; and, (3) whether the trial court erred in denying Plaintiffs’ request for permanent injunction and declaratory judgment, even though neither were before the court, and without a trial on the merits and without reaching the issues of equal vagueness and over breadth or the special permit required for Vintage Church to have services on its private property.

For the sake of brevity, Plaintiffs’ Petition, including the remaining legal arguments, are incorporated by reference as if fully set forth herein.

The record is ripe with evidence that supports a prima facie showing that Plaintiffs’ right to free exercise of religion was substantially burdened, and therefore irreparable injury resulted. For these reasons, the trial court’s judgment is not in accord with applicable law directing an evidentiary hearing for preliminary injunctions. Plaintiffs, therefore, seek a ruling that sets aside the judgment denying the preliminary injunction, permanent injunction, and declaratory action.

B. Defendants’ Enforcement of JPCO 20-102 Imposes a Substantial Burden on Plaintiffs’ Free Exercises of Religion and, Therefore, Plaintiffs Have Suffered Irreparable Injury as a Matter of Law.

The trial court denied injunctive relief solely on the grounds that Defendants “do not impose a substantial burden on Plaintiffs’ exercise of their religious beliefs.” Hrg. Tr., 176:11–14. It reached this conclusion based on its presumption that Plaintiffs’ present meeting space is adequate. Specifically, “if the church went to a ten o’clock time like they once had, with a larger tent...they can get all of their

parishioners in at one time, and would not be in violation of the ordinance,” or “[y]ou can start at the nine o’clock time, but you have to adhere to the requirements of the statutes and the ordinance.” *Id.* at 177:4–8, 1–13.

Plaintiffs uncontroverted testimony, however, was that moving to a larger tent would run afoul of Jefferson Parish’s parking requirements and moving to a later start time with two services would hurt Vintage Church’s ability to reach as many people as possible with the Gospel. Hrg. Tr., 67:6–28 and 22:19–26 (“due to the restrictions that were placed on us because of parking, we had to pay to minimize the tent. . . we could no longer fit our congregation into one worship service...of the size of the congregation, it would be impossible for us to meet once at 10 a.m.”); Hrg. Tr., 78:16–26 (“...our encouragement for our kid’s volunteers...is to have two services at one location, because we encourage, especially, our kid's volunteers to serve one and attend one.”); Hrg. Tr., 41:10–26 (“Q. So what is the significance of ending everything by noon... A. ...its primarily for us to be the most effective as a church...to facilitate that time for them to worship Jesus to hear the gospel preached.”).

While there are no cases interpreting the LPRA, numerous courts at both state and federal levels have interpreted either RFRA. Defendants and Plaintiffs agree that RLUIPA’s “substantial burden clause” employs the same fundamental test that is employed in LPRA (and RFRA). Defendants’ Memorandum in Opposition (hereinafter “Defs. Mem. Opp.”), 4. Therefore, we look to cases decided under RFRA to provide guidance as to the meaning of “substantial burden” under LPRA and RLUIPA. See *Marria v. Broaddus*, 200 F.Supp.2d 280, 298 (S.D.N.Y.2002); *Charles v. Verhagen*, 220 F.Supp.2d 937 (W.D.Wis.2002).

The trial court also misapplied the legal standard at issue. RLUIPA and the LPRA protect religious institutions, like Vintage Church, from regulations that

substantially affect their ability to use their property in the exercise of their religion. *See O Centro Espirita*, 546 U.S. at 428.

“Burden,” under the LPRA, “means that the government, directly or indirectly...: (a) Constrains or inhibits conduct or expression mandated by a person’s sincerely held religious tenet or belief. (b) Significantly curtails a person’s ability to express adherence to the person’s religious faith. (c) Denies a person a reasonable opportunity to engage in activities which are fundamental to the person’s religion. (d) Compels conduct or expression which violates a tenet or belief of a person’s religious faith.” La. R.S. § 13:5234(2).

Although not required, Plaintiffs have attempted every feasible means to meet Jefferson Parish’s requests. Hrg. Tr., 18:8–28. However, even when Plaintiffs have attempted to operate with no sound amplification, which by its very nature significantly hinders Plaintiffs’ ability to worship, preach, and teach and the congregants’ ability to hear, Plaintiffs have still been issued a criminal summon and faced the constant threat of arrest. *Id.* at 26:29–27:15.

Further, the trial court’s ruling is counter to the uncontroverted facts presented in two primary ways. First, Jefferson Parish is the one that mandated that Vintage Church reduce the size of the tent in which they were meeting by half to meet parking requirements. *Id.* at 24:3–5 and 22:15–26. Vintage Church paid to comply, even though doing so did not allow them to provide sufficient space to house all of their congregants. *Id.* at 22:15–26. Because of Jefferson Parish’s instruction, Plaintiffs were required to switch from one service to two services at 9:00 a.m. and 11:00 a.m. to make space for its members. *Id.*; Pla. Pet., ¶32.

Because Jefferson Parish required the decrease in the size of Vintage Church’s tent, Plaintiffs are not free to follow to the court’s suggestion without running afoul of another law.

Second, on the basis of JPCO 20-102(f) and (h)(3), Defendants maintain that Vintage Church (1) must maintain a sound level below 60 dB at *all* times, even after 10:00 a.m., and (2) refrain from using *any* sound amplification before 10:00 a.m. on Sundays. *Id.* at 27:5–8. Regardless of the time of worship, Plaintiffs face the threat of arrest for worshipping according to their religious beliefs. *Id.* When Vintage church held a single service at 10 a.m. and when it held a service at 9:00 a.m. *without* amplification, Police officers issued its Pastor criminal summons at both. *Id.* at 57:17–26. These uncontroverted facts alone are enough to establish a substantial burden under LPRA and RLUIPA.

Further, the church's outreach to the community, worship, preaching the Word of God, reaching people for the Gospel has been burdened. *Id.* at 17:8–32; 18:1–28; 26:29–27:15. Because Plaintiffs continue to engage in these fundamental religious exercises, expression, and practice, Defendants may continue to issue summons that could result in a \$500 per Sunday fine and up to 6 months of imprisonment. *Id.* at 120:15–18; 121:30–122:4 and 122:31–32; Pla. Pet., ¶76. Defendants maintain that they have authority to “physically arrest” Plaintiffs. *Id.*

Plaintiffs now have to decide whether to continue to have religious worship and preaching while facing the constant threat of arrest and fine or whether to stop having religious worship and preaching in the community, in violation of Plaintiffs' sincerely-held religious belief that they are called to worship and preach at 3927 Rayne Street. Hrg. Tr., 24:31–25:04.

The U.S. Court of Appeals for the Fifth Circuit observed that, under *Yoder*, one of the cases that RFRA was enacted to restore, a substantial burden existed when a “law affirmatively compel[led] [Plaintiffs], under threat of criminal sanction, to perform acts undeniably at odds with fundamental tenets of their religious beliefs.” *Merced v. Kasson*, 577 F.3d 578, 589 (5th Cir. 2009) (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 218 (1972)). The *Merced* court went on to state

that, “at a minimum, the government’s ban of conduct sincerely motivated by religious belief substantially burdens an adherent’s free exercise of that religion. While not a general rule—the inquiry is fact-specific—we note that such a conclusion accords with the Texas Supreme Court’s decision in *Barr*: ‘A restriction need not be completely prohibitive to be substantial....’” *Id.* at 590.

In *Sherbert* itself, the U.S. Supreme Court stated that depriving a person of unemployment benefits

forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand. Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship. Nor may the [lower] court’s construction of the statute be saved from constitutional infirmity on the ground that unemployment compensation benefits are not appellant’s “right” but merely a “privilege.” It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege.

Sherbert, 374 U.S. 398, 404 (1963); see also *Thomas v. Review Bd. Of Ind. Emp’t Sec. Div.*, 450 U.S. 707, 717–18 (1981) (“Where the state ... put[s] substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists.”); *Yoder*, 406 U.S. at 208, 218 (a \$5 fine “is not only severe, but inescapable, for the ... law affirmatively compels them, under threat of criminal sanction, to perform acts undeniably at odds with fundamental tenets of their religious beliefs.”).

If a \$5 fine is “not only severe, but inescapable,” then how much more so is the constant threat of either a \$500 fine or physical arrest? As in *Yoder*, Plaintiffs are compelled, “under threat of criminal sanction,” to violate religious beliefs by not performing duties to which they have a religious calling and obligation.

Defendants assert that they are “not trying to...pressure [Plaintiffs] into modifying their behavior in a concrete way....In fact, the Parish has made

absolutely no comment regarding Plaintiffs' religious beliefs." Defs. Mem. Opp., 6. However, this is not the legal standard set forth in LPRA and RLUIPA. Additionally, in the same paragraph Defendants concede that Jefferson Parish "require[d] them to turn the volume down on music and amplified sounds used during the services to 60 decibels as registered at the property line..." *Id.* Thus, in Defendants own words, they are requiring Plaintiffs to alter their worship service with land use regulations, which is the legal issue set before this Court.

Courts have held that zoning ordinances that significantly lessen the prospect of a religious institution's being able to use the property to further its religious mission contravenes RLUIPA. *See Guru Nanak Sikh Soc'y of Yuba City v. Cnty. of Sutter*, 456 F.3d 978, 992 (9th Cir. 2006) (holding that the defendant county's two denials of variance permits, under the circumstances, had "to a significantly great extent lessened the prospect of [the religious institution] being able to construct a temple in the future," thus imposing a "substantial burden" on the religious institution); *Roman Catholic Diocese*, 2012 U.S. Dist. LEXIS 56694, 2012 WL 1392365, at *8 (E.D.N.Y. Apr. 23, 2012) (upholding plaintiff's facial challenge to zoning law, because "conditions imposed by the [law] would significantly restrict the [plaintiff's] use of their Property for religious burial purposes"); *Grace Church of N. Cnty. v. City of San Diego*, 555 F. Supp. 2d 1126, 1138 (S.D. Cal. 2008) (holding that "based on the undisputed facts in this case, . . . Defendants [have] implemented a land use regulation in a manner that imposed a 'significantly great restriction or onus' on Plaintiff's religious exercise").

As a final note, Courts have held that substantial burdens can come in many forms. For example, as in the current case, courts have held that zoning schemes that impose conditions on the use of the property, such as limitations on the size of the facilities to be used by the religious institution, impose a substantial burden. *See Roman Catholic Diocese*, 2012 WL 1392365, at *8; *Chabad Lubavitch*

of Litchfield Cnty., Inc. v. Borough of Litchfield, 796 F. Supp. 2d 333, 343 (D. Conn. 2011); *Cathedral Church of the Intercessor v. Inc. Village of Malverne*, 2006 WL 572855, at *8 (E.D.N.Y. Mar. 6, 2006) (finding substantial burden, where space limits imposed by defendants “constrained” the ability of the church’s parishioners to “observe or participate” in religious services).

As Plaintiffs have alleged here, Courts also have found that religious institutions have satisfied the substantial burden requirement by alleging or proving that a municipality’s zoning scheme imposes significant “delay, uncertainty, and expense.” *Sts. Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895, 901 (7th Cir. 2005); *see also Westchester Day Sch. v. Vill of Mamaroneck*, 504 F.3d 338, 349 (2d Cir. 2007); *Grace Church*, 555 F. Supp. 2d at 1137–39 (finding a substantial burden from uncertainty and expense resulting from zoning regulations and from municipal officials’ consistent hostility toward plaintiff in their review of plaintiff’s land use applications).

In other words, “a complete denial” of a religious institution’s intended use of its property “is not necessary for the Court to find that the government regulation . . . impose[s] a substantial burden on religious exercise.” *Cathedral Church*, 2006WL 572855, at *8; *see also Sts. Constantine & Helen*, 396 F.3d at 899–900 (finding that to establish substantial burden, a religious group need not “show that there was no other parcel of land on which it could build its church”); *Westchester Day Sch. v. Village of Mamaroneck*, 379 F. Supp. 2d 550, 556–57 (S.D.N.Y. 2005). As the Second Circuit held, “when the town’s actions are arbitrary, capricious, unlawful, or taken in bad faith, a substantial burden may be imposed because it appears that the [religious institution] may have been discriminated against on the basis of its status as a religious institution.” *Fortress Bible Church v. Feiner*, 694 F.3d 208, 219 (2d Cir. 2012).

Likewise, Defendants have significantly lessened the ability of Plaintiffs to use the property to further their religious mission, have restricted the church's use of their private property (in size limitations, permit limitations, and sound limitations), have constrained the ability of Vintage Church congregants to worship as they cannot hear the preaching and music, and Jefferson Parish's implementation of the JPCO 20-102 results in substantial delay, uncertainty, and expense to Vintage Church. The church is now losing both congregants and quality of worship because of the enforcement of JPCO 20-102. Hrg. Tr., 26:29–27:15.

Specifically, Pastor Wilton testified that Vintage Church's mission is "about living the Gospel, serving the city and being the church, with the hope of proclaiming the love of Jesus with our world." *Id.* at 12:9–12. He described Vintage Church as "a growing church in need of a property." *Id.* at 12:28–29. "The primary reason [the church moved to a tent] was because [Vintage Church] was running out of room for our worship services." *Id.* at 12:19–21. Pastor Wilton testified that the worship service begins with music and prayer, and utilizes "creative arts to display the message that we're trying to portray, through different creative uses of video, different songs" in addition to preaching. *Id.* at 15:28–16:9. He also described the order of Vintage Church's worship service as important because it enables the church "to prepare ourselves for the Word of God, for the Bible. Everything that we do in our worship services is grounded in the Bible. And, we want people to be ready to receive the Bible when I stand up to preach. We do believe that the preaching of God's Word is the primary thing that we want to accomplish each week. So, our music every week prepares our people to hear the Bible." *Id.* at 16:10–19. Therefore, the design of the worship service is controlled by religious considerations, not secular. *Id.* at 17:3–5.

In addition, Pastor Brichetto testified that limitations on children's facilities prevented the church from conducting services at other venues. *Id.* at 77:1–5. Even

though Pastor Wilton testified that the church had considered five alternative venues, Vintage Church could not find an alternate location with all of the equipment necessary to ensure the safety of the children and to teach the children in the congregation about Jesus. *Id.* at 22:30–23:16. Finally, he unequivocally explained to the court that the services cannot be held later “for our families, so that their kids can come to church...” *Id.* at 23:20–24. This children’s ministry is vital to its exercise of religious belief and furtherance of its. *Id.* at 22:12–16.

Further, the financial strain required to move to an alternate venue is not feasible for the church as it expands its current facility. *Id.* at 24:28–31.

Significantly for the church, Pastor Wilton states the church is “called to that property. We’re called to that community. It’s part of our mission statement. We love our neighborhood; we love our community. And we continue to be driven to stay right there...” *Id.* 24:28–25:4.

Therefore it is more than a substantial burden for the Vintage Church to alter its services to adhere to JPCO 20-102 and to change its worship service to a different time and/or location, as the Court and Defendants suggest—it is an impossibility. *Id.* at 22:12–26. Pastor Wilton testified that Vintage Church’s services, including the use of sound to preach and worship God, and the primary way to “be effective as a church . . . is to serve my congregation,” to “facilitate that time for them to worship Jesus and hear the gospel preached,” “to reach more members with the gospel in furtherance of [its] mission as a church,” and to “make more disciples to reach more people.” *Id.* at 41:10–28.

The innumerable requisites that Defendants have placed on Plaintiffs’ time, manner, and structure of worship, as described here, show at minimum a prima facie case of substantial burden.

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**C. Defendants' Enforcement of JPCO 20-102 Against Plaintiffs
Violates the Equal Terms Provision of RLUIPA.**

As Congress recognized, land use regulations pose a particularly serious risk to religious freedom because “[t]he right to assemble for worship is at the very core of the free exercise of religion,” and “[c]hurches and synagogues cannot function without a physical space adequate to their needs and consistent with their theological requirements.” 146 Cong. Rec. 16698 (2000).

To protect these fundamental rights, RLUIPA imposes several limitations, divided into four categories, on government land-use regulations. *First*, Defendants and Plaintiffs both agree the “Substantial Burden Clause” uses the same fundamental test that is employed by RFRAs. Defs. Mem. Opp., 4. *Second*, the “Equal Terms Clause” provides that “No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.” 42 U.S.C. § 2000cc(b)(1). *Third*, the “Nondiscrimination Clause” prohibits any government from “impos[ing] or implement[ing] a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.” 42 U.S.C. § 2000cc(b)(2). *Finally*, the “Unreasonable Limitation Clause” prohibits governments from “impos[ing] or implement[ing] a land use regulation that ... unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.” 42 U.S.C. § 2000cc(b)(3)(B). Congress specifically provided that RLUIPA “shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this Act and the Constitution.” 42 U.S.C. § 2000cc-3(g).

JPCO 20-102 violates RLUIPA because it imposes and implements a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

There are four elements of an Equal Terms violation: (1) the plaintiff must be a religious institution; (2) subject to a land use regulation; that (3) treats the religious institution on less than equal terms; with (4) a nonreligious institution. *See Primera Iglesia Bautista Hispana of Boca Raton, Inc. v. Broward Cnty.*, 450 F.3d 1295, 1307–08.

The Equal Terms Clause prohibits imposing or implementing a land use regulation so as to treat a religious assembly “on less than equal terms” than a nonreligious assembly. 42 U.S.C. § 2000cc(b)(1). There can be no serious dispute that Jefferson Parish is a “government” within the meaning of the statute, see 42 U.S.C. § 2000cc-5(4) (defining “government” to include, inter alia, “a State, county, municipality, or other governmental entity created under the authority of a State”); that the provisions of JPCO 20-102 at issue are “land use regulation[s],” see § 2000cc-5(5) (defining “land use regulation” as “a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant’s use or development of land . . .”)(Defendants’ concede that the Parish “requires them to turn the volume down on music and amplified sounds used during the services to 60 decibels as registered at the property line before 10:00 a.m.” Defs. Mem. Opp., 6; and that Vintage Church is a “religious assembly or institution.”

Thus, the dispositive issue is whether JPCO 20-102 treats Vintage Church “on less than equal terms with a nonreligious assembly or institution” or is selectively enforced against religious, as opposed to secular, assemblies or institutions. 42 U.S.C. § 2000cc(b)(1); *see Third Church of Christ, Scientist v. City of N.Y.*, 626 F.3d 667, 669 (2d Cir. 2010) (“Determining whether a municipality has treated a religious entity “on less than equal terms” requires a comparison between the religious entity and a secular one.”); *Opulent Life*, 697 F.3d at 293.

Testimony, as well as evidence pled and presented, make it clear that JPCO 20-102 violates the Equal Terms Clause. The provision, and Jefferson Parish’s

unequal implementation of the ordinance, imposes onerous burdens on Vintage Church not imposed on any other type of institution, similarly situated or not.

Jefferson Parish requires Vintage Church, and only Vintage Church: (1) to obtain a special event permit to utilize the church's private property for a service, while other private property owners do not need to obtain permits;² (2) to not use any sound amplification whatsoever, including any microphones, when numerous other loud sounds (such as construction, demolition, powered model vehicles, lawn mowers, and power tools) may begin at 8:00 a.m. on Sundays. JPCO 20-102(h); (3) to not utilize non-acoustic musical instruments; (4) to have more than two police officers arrive to monitor the church service. Hrg. Tr., 113:7-12 (Sherriff Normand admitting that "typically, we have two officers go out...if we're going to use the sound meter."); (5) to operate under the threat that Jefferson Parish and the Sherriff's Office will "shut down the service" for noise that exceeds 60 decibels; 19: 26-29. *See id.* at 138:6-7; (6) to be issued criminal summons for noise that exceeds 60 decibels, while nonreligious noise violations receive exemption. JPCO 20-102(h); (7) Pastor Wilton testified that "just about every week [they were] given new notice of different requirements." *Id.* at 17:31-18:3.

This differential treatment of churches cannot be justified by any regulatory purpose or zoning criterion set forth in the ordinance and the specific enforcement against Vintage Church is unconstitutional as a matter of law. Consequently, Plaintiffs have established a prima facie Equal Terms Clause violation, irreparable injury is presumed, and their preliminary injunction should have been granted.

D. JPCO 20-102 is Facially Unlawful Under the Equal Terms Provision of RLUIPA.

In addition to Defendants' discriminatory application of JPCO 20-102, JPCO 20-102 is facially illegal under RLUIPA's equal terms provision.

² Defendants appear to agree with Plaintiffs that requiring Plaintiffs to seek a special event permit was improper, as they "gladly stipulate[d] that the Special Events Permit probably should not have been issued" and "I stipulated that probably it shouldn't have been issued...that doesn't mean it wasn't." Hrg. Tr., 166: 6-9; 177: 4-6.

The ordinance allows for numerous exceptions, while Vintage Church's preaching and worship is excluded from the exceptions. For example, power tools, lawn mowers, construction and demolition work, and powered model vehicles are permitted to be used beginning at 8:00 a.m. on Sundays and holidays, without regard to their noise level. JPCO 20-102(g)(1); JPCO 20-102(h)(6) and(7). Persons who receive a permit, noise from church bells and chimes, and garbage collection are exempted from the sound levels in Table 1. JPCO 20-102(g)(3),(5),(7). Noises from temporary construction activity are limited to 75 dB instead of 60 dB. JPCO 20-102(g)(6). Noise from "[i]nfrastructure construction, repair, or maintenance by or on behalf of the Parish of Jefferson" is exempt from the sound levels in Table 1. JPCO 20-102(g)(8). And noise from the use of a power generator is exempt from the sound levels in Table 1 between 7:00 a.m. and 10:00 p.m. JPCO 20-102(h)(6).

Pursuant to JPCO 20-102, burdensome conditions on the noise levels of Plaintiffs' property were not imposed on landowners utilizing their properties for non-religious uses. The trial court should have determined that Plaintiffs are likely to succeed on the merits of its facial claims against the ordinance.

JPCO 20-102 even effectively discriminates between churches as church bells and chimes are excepted from the ordinance, but Vintage Church, which uses different instruments for worship, is not exempted.

V. Plaintiffs Satisfied the Irreparable Harm Requirement and their Preliminary Injunction Must be Granted

Plaintiffs have demonstrated that they will suffer irreparable harm, absent the injunction they seek, as a matter of law in two ways: (1) Plaintiffs allege violations of their First Amendment, LPRA, and RLUIPA rights; and, (2) Plaintiffs seek to restrain Defendants from unconstitutional and unlawful conduct. *Jurisich*, 749 So.2d at 599; *Shane*, 150 So. 3d at 413. Therefore, the trial court abused its

discretion in denying the preliminary injunction, despite the uncontroverted evidence and testimony presented at the hearing.

Plaintiffs previously established the substantial burden placed on their sincerely held religious exercise, therefore irreparable harm is established. In the alternative, Plaintiffs would also plead that Defendants actions result in irreparable harm. It is uncontested that Defendants have dispatched multiple police vehicles on twenty Sundays to Vintage Church as well as issued two criminal summons to Plaintiffs because of Plaintiffs' exercise of their religious beliefs to worship and preach. *Id.* at 131:26–28; 139:6–8. Any harm to a person's religious exercise is automatically an irreparable damage. As the U.S. Court of Appeals for the Fifth Circuit held, a plaintiff church "has satisfied the irreparable-harm requirement because it has alleged violations of its First Amendment and RLUIPA rights. 'The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.' *Elrod*, 427 U.S. at 373 (1976); see also 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2948.1 (2d ed. 1995) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.").

This principle applies with equal force to the violation of RLUIPA rights because RLUIPA enforces First Amendment freedoms, and the statute requires courts to construe it broadly to protect religious exercise. *Opulent Life*, 697 F.3d at 295. This same principle applies to RFRA (and thus LPRA) as it does to RLUIPA. *Kikumura*, 242 F.3d at 963 ("a plaintiff satisfies the irreparable harm analysis by alleging a violation of RFRA."); *Tyndale House Publr., Inc.*, 904 F. Supp. at 129; *O Centro Espirita*, 546 U.S. at 429; and *Jolly*, 76 F.3d at 482.

Defendants have maintained that under JPCO 20-102, they have authority to continue issuing criminal summons, to dispatch police vehicles to Vintage Church,

to “shut down” the church service, and make physical arrests. Hrg. Tr., 116:12–16 (“we’ll continue to issue the summons, and at some point in time, this is going to be resolved in a court of law”); Hrg. Tr., 120: 15–18; Hrg. Tr., 121:30–122:04 and 122:31–32; Hrg. Tr., 124:15–18 and 27–28 (“it is a possibility, under the law, that an arrest could be affected.”).

Executive Pastor Brichetto was arrested twice as a criminal summons and was threatened with physical arrest if Vintage Church continued to have worship services that followed its religious beliefs and its mission statement. *See id.* at 63:32–64:04. As Vintage Church meets each Sunday, a preliminary injunction is necessary to stop the continued violation of Plaintiffs’ religious exercise.

Second, Plaintiffs are entitled to injunctive relief *without* the requisite showing of irreparable injury, when the conduct sought to be restrained is unconstitutional or unlawful. *Jurisich*, 749 So.2d at 599. Plaintiffs seek to enjoin Defendants from unconstitutional and unlawful conduct, alleging that JPCO 20-102 and JPCO 26-31 are enforced in a manner that violate the First Amendment, Equal Protection clauses, and are unconstitutionally overbroad and vague. Plaintiffs are therefore not required to prove irreparable harm in order for a preliminary injunction to be issued. *See id.*; *Shane*, 150 So. 3d at 413.

Although the trial court’s ruling abuses its discretion for these two reasons, Plaintiffs pled in the alternative that they have demonstrated a prima facie case of substantial likelihood of success on the merits that irreparable injury has occurred. The record is replete with evidence of irreparable harm to Plaintiffs’ ability to freely exercise their religion.

Moreover, the sufficiency of this evidence is strengthened by the rule that courts may not second-guess a religious entity’s sincere belief that certain activities are central to or required by its religion. *See Hobbie v. Unemployment Appeals*

Comm'n, 480 U.S. 136, 144 n.9 (1987); *Merced v. Kasson*, 577 F.3d 578, 590 (5th Cir. 2009) (citing *Smith*, 494 U.S. at 887)).

As Pastor Wilton told the lower court, Jefferson Parish caused significant harm to the church because “the restriction that has been placed within our worship has severely effected our religious activity, from everything from: [t]he fatigue that is put on those who are leading on stage; they can’t tap into sound amplification; people aren’t able to hear the message as clearly. We’ve been restricted to be able to use our creative arts with video, because we’re not allowed to use sound amplification. And, this has also had an emotional effect on my church congregation. We’ve had quite a few people express to us that they can no longer be a part of our church, because of the strain that this has caused them, and the fears they have.” Hrg. Tr., 26:29–27:15.

Plaintiffs met their burden of showing that irreparable injury has occurred and may continue to occur under the law, this harm vastly outweighs the potential harm or inconvenience to Defendants.

If this Court queries the impact Jefferson Parish’s actions have had on the small congregation meeting in Metairie, Louisiana, perhaps most powerful evidence comes from its Pastor,

“[T]hey face the difficulties every week. They know exactly what's going on, because of multiple police officers being called to our property, because every single week after seven years of being a church, now all of a sudden, we're having to worship in environments that are completely different, that are restricted, that are filled with fear. They've seen everything that's happened. So, I don't have to remind them, they know exactly what's going on with our church.”

Id. at 41:24–31.

A. The Trial Court Abused its Discretion in Denying Plaintiffs’ Request for Permanent Injunction and Declaratory Judgment

The trial court’s oral judgment at the hearing for the preliminary injunction ruled that because the trial court failed to find that Defendants impose a substantial

burden on Plaintiffs' exercise of religion, "[t]herefore, the Court denie[d] the Plaintiff's request for Preliminary and Permanent Injunction in a Declaratory Judgment." Hrg. Tr., 176:11-14; 176:19-22.

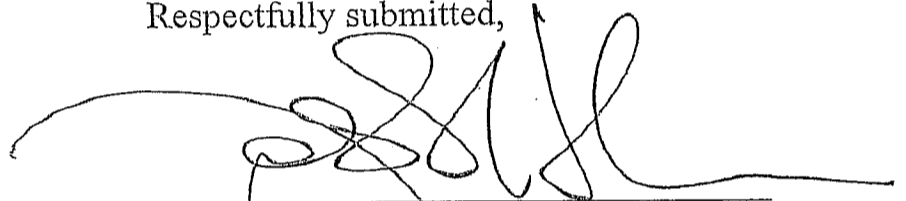
However, the issuance of a permanent injunction and declaratory judgment, as it involves an issue of fact, takes place only after a full trial on the merits. *Mary Moe, L.L.C. v. La. Bd. of Ethics*, 03-2220 (La. 04/14/04) 875 So. 2d 22, 29; *Werner Enterprises, Inc. v. Westend Dev. Co.*, 477 So. 2d 829, 832 (La. App. 5th Cir. 1985); *Kliebert Educational Trust v. Watson Marines Services, Inc.*, 454 So. 2d 855 (La. App. 5th Cir. 1984), writ denied, 457 So. 2d 682 (La. 1984); *Federal Nat'l Mortg. Ass'n. v. O'Donnell*, 446 So. 2d 395, 399 (La. App. 5th Cir. 1984); *General Motors Acceptance Corp. v. Daniels*, 377 So. 2d 346, 348 (La. 1979); LSA-C.C.P. art. 1879; *Reyes v. S. Envtl. of La, LLC.*, 13-380 (La. App. 5 Cir. 12/19/13); 131 So 3d 450, 454.

Further, the Trial Court abused its discretion in denying Plaintiffs' declaratory judgment on the basis of substantial burden and irreparable harm alone. Plaintiffs sought a Declaratory Judgment declaring that (i) JPCO 20-102 is impermissibly vague and overbroad in its application to Plaintiffs, (ii) Defendants' application of JPCO 20-102 to Plaintiffs in such a manner as to curtail or limit Plaintiffs' religious actions or conduct is a violation of the LPRA, (iii) Defendants' application of JPCO 20-102 to Plaintiffs in such a manner as to curtail or limit Plaintiffs' religious actions or conduct is a violation of RLUIPA, and (iv) Vintage Church is not required to have a special event permit in order to have a church service in a tent on its own property. Pla. Pet. ¶111(d). The trial court abused its discretion by denying Plaintiffs' request for declaratory judgment, without reaching any of these issues in its Judgment. See *W. World Ins. Co. v. Paradise Pools & Spas*, 633 So. 2d 790, 792 (La. App. 5 Cir. 1994); *Keys v. Box*, 476 So. 2d 1141 (La.App. 3rd Cir. 1985).

VI. PRAYER FOR RELIEF

Plaintiffs pray that this Court grant a supervisory writ and reverse the district court's Judgment denying Plaintiffs' request for preliminary injunction, permanent injunction, and declaratory judgment. Further, Plaintiffs pray that this Court direct that the district court issue a preliminary injunction to enjoin Defendants and any of their agents, employees, or other persons or entities acting on their behalf or in their stead from (i) enforcing JPCO 20-102 against Plaintiffs or (ii) requiring a special event permit in order to have a church service on property wholly owned by Plaintiffs. Plaintiffs also pray that this Court award Plaintiffs such other and further relief to which they may be entitled.

Respectfully submitted,



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*Counsel for Plaintiffs Vintage Church of
New Orleans, Inc. and Matthew P.
Brichetto*

VERIFICATION

STATE OF LOUISIANA

PARISH OF JEFFERSON

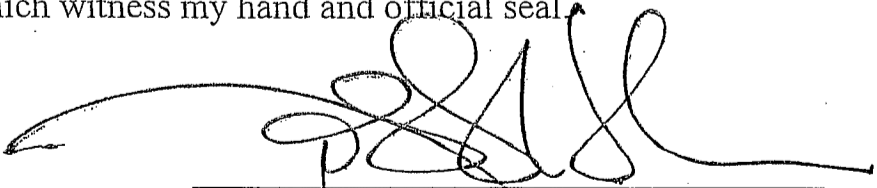
Before me, the undersigned authority, duly commissioned and qualified in and for the Parish aforesaid, personally appeared Matthew P. Brichetto, known to me, who, being first duly sworn, upon his oath deposed and stated as follows:

1. My name is Matthew P. Brichetto. I am over the age of eighteen years old, and I am fully competent to make this verification.
2. I am the Executive Pastor of Vintage Church of New Orleans, Inc., a Louisiana non-profit corporation and a petitioner herein.
3. I have read the above and foregoing APPLICATION OF PLAINTIFFS VINTAGE CHURCH OF NEW ORLEANS, INC. and MATTHEW P. BRICHETTO FOR SUPERVISORY WRIT (the "Application for Supervisory Writ"), and I am familiar with the facts alleged therein.
4. All of the information contained in the Application for Supervisory Writ is true and correct to the best of my knowledge, information, and belief.



 MATTHEW P. BRICHETTO

SWORN TO AND SUBSCRIBED before me on this 5th day of February, 2016, to certify which witness my hand and official seal.



 JOSHUA P. MATHEWS (LSBN 30615)
 NOTARY PUBLIC IN AND FOR THE
 STATE OF LOUISIANA

My commission expires with life.